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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/598,060	06/20/2000	Bernhard Kraus	1826-015	5495

9629 7590 11/25/2003

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EXAMINER

GUADALUPE, YARITZA

ART UNIT PAPER NUMBER

2859

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/598,060

Applicant(s)

KRAUS ET AL.

Examiner

Yaritza Guadalupe

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 13-15 and 17-20 is/are rejected.
- 7) ☒ Claim(s) 5 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

In response to Amendment filed September 12, 2003

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 6 - 7, 9, 14, 17 – 18 and 20 are rejected under 35 U.S.C. 102 ( b ) as being anticipated by Pompei ( US 6,292,685 ).

Pompei discloses a radiation thermometer comprising an infrared radiation detector ( 20 ) and a probe tip ( 64 ) including a radiation inlet opening ( 63 ) enabling infrared radiation to travel from a measurement site to the sensor, wherein it additionally includes a probe head / cover ( 7 ). Pompei also discloses an opening / aperture ( 66 ) for infrared radiation, which is closed by a window ( 63 ) transparent to infrared radiation. Pompei also discloses a switch ( 28 ) actuatable when the probe cover is installed and that the temperature indication from the measurements is influenced by the actuation of the switch ( See Column 5, lines 41 – 55 ). Pompei further discloses the probe head / cover ( 7 ) having a shape selected so that the

Art Unit: 2859

measurement site is shielded from infrared radiation emanating from the environment ( See Figures 1 and 2A ).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pompei ( US 6,292,685 ) [ Hereinafter Pompei '685 ] in view of Pompei ( US 6,047,205 ) [Hereinafter Pompei '205 ].

Pompei ( '685 ) discloses a radiation thermometer as stated in paragraph 2 above.

Pompei ( '685 ) does not disclose the pivotal probe tip or probe head as stated in claims 3 and 13.

Regarding claims 3 and 13 : Pompei ( '205 ) discloses a radiation detector probe having a probe tip being pivotal in at least one spatial plane ( See Figure 2 and Column 5, lines 14 – 17 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the

Art Unit: 2859

invention was made to provide a pivotal probe tip as taught by Pompei ('205) in the radiation thermometer disclosed by Pompei ('685) in order to allow flexibility to the probe tip that will prevent from damages to the structure and significantly reduce discomfort while using the thermometer on a patient.

5. Claims 8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable Pompei ( US 6,292,685 ) in view of Pompei et al. ( US 5,893,833 ).

Pompei ('685) discloses a radiation thermometer as stated in paragraph 2 above.

Pompei ('685) does not disclose the funnel-shaped configuration as stated in claims 8 and 19.

With respect to claims 8 and 19 : Pompei et al. ('833) discloses a probe tip / probe head comprising a funnel – shaped configuration. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to change the shape of the probe head disclosed by Pompei ('685) with a funnel – shaped head as taught by Pompei et al. ('833) in order to enhance the measurements by increasing the area of heat transfer and since the use of a funnel – shape on the probe head is only considered to be an obvious modification of the shape or configuration of the probe shape disclosed by Pompei ('685) as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a

Art Unit: 2859

person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976 ) and since Pompei ('685) teaches the need of doing so.

#### ***Allowable Subject Matter***

6. Claims 5 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

7. Applicant's arguments, see remarks in page 6, filed September 12, 2003, with respect to the rejection(s) of claim(s) 1 – 9 and 13 - 20 under 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Pompei '685 and Pompei '205.

#### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (703)305 -5676. The examiner can normally be reached on 9:00 AM - 6:30 PM.

Art Unit: 2859

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (703) 308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7722 for regular communications and (703)308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.



Yaritza Guadalupe  
Patent Examiner  
Art Unit 2859  
November 20, 2003

DIEGO F.F. GUTIERREZ  
SUPERVISOR PATENT EXAMINER  
TECHNOLOGY CENTER 2800